

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

THAN ORN, individually, THALISA ORN,  
individually, J.O. and C.O., by their  
Guardian, CLARISSE ORN,

Plaintiffs,

vs.

CITY OF TACOMA, a municipal  
corporation; and KRISTOPHER CLARK, in  
his individual capacity,

Defendants.

CASE NO. 3:13-cv-05974-RBL

**PLAINTIFFS' MOTION FOR  
PRIORITY TRIAL DATE**

**NOTED FOR: JULY 17, 2020**

**I. RELIEF REQUESTED**

Plaintiffs hereby move the Court for a priority trial date in the event the current trial date is amended due to unforeseen circumstances. This lawsuit arises from Tacoma Police Officer Kristopher Clark shooting and paralyzing Plaintiff Than Orn, a 34-year-old Cambodian American, on the night of October 12, 2011. As a result of the shooting, Plaintiff Orn is confined to a wheelchair and suffers from severe and permanent injuries. He has undergone numerous hospitalizations and infections due to his fragile medical condition. The hospitalizations and his medical issues caused by Defendants' acts and omissions have led to

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several continuances in this case. Trial is now set for January 11, 2021, nearly ten years after the date of the shooting.

In the last couple of months, the COVID-19 pandemic has changed the world and afflicted the State of Washington resulting in substantial delay in all commerce, including the courts. Recently, on May 13, 2020, the United States District Court for the Western District of Washington issued General Order No. 08-20 “in response to the continuing outbreak of Coronavirus Disease 2019 (COVID-19).” According to this order, “[a]ll grand jury proceedings, as well as civil and criminal in-person hearings and trial dates in these Courthouses scheduled to occur before August 3, 2020, are continued pending further order of the Court.” General Order No. 08-20. Currently, jury trials are postponed until August, although this date may change if there are new outbreaks. Plaintiffs recognize the uncertainty around what effects these delays may have on future trial dates and whether there will continue to be new COVID-19 outbreaks in the District. However, due to Plaintiff Orn’s severe injuries, his lack of mobility, his vulnerable health, his history of infections and hospitalizations, and the length of time from the filing of this complaint to the set date of trial, Plaintiffs respectfully ask this Court to prioritize Plaintiffs’ trial date in the event current trial dates are continued.

## II. RELEVANT FACTS

On October 12, 2011, Officer Kristopher Clark of the Tacoma Police Department shot Plaintiff Than Orn, seriously injuring and paralyzing him from the waist down.<sup>1</sup> Plaintiffs filed this lawsuit in 2013 against Clark and the City of Tacoma under 42 U.S.C. § 1983 alleging a violation of Plaintiff Orn’s Fourth Amendment right to be free from the use of excessive force.<sup>2</sup> Plaintiff Orn is a vulnerable adult who, since the shooting, has been hospitalized multiple times and has suffered significant and unexpected medical issues. Plaintiff Orn’s expert, Dr. Singh,

<sup>1</sup> Dkt. # 98, Attachment 1 at Ex. 4 (Dep. of Than Orn at 19:10-12; 39:15-18; 123:24-124:4; 129:18-131:9); Dkt. #98, Attachment 1 at Ex. 1 (Dep. of Gene Miller at 79:6-12).

<sup>2</sup> Dkt. #1, Ex. 2 (Complaint).

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assessed him on September 30, 2014 and April 13, 2017, and concluded that his spinal cord injury and substance abuse after the incident will significantly shorten his life.<sup>3</sup>

Trial in this case has been continued five times due to case complexity and Plaintiff Orn's severe and continuing medical problems and hospitalizations. Trial was initially scheduled to begin on May 4, 2015,<sup>4</sup> but the parties stipulated to a continuance based on the complex nature of the case and trial was continued.<sup>5</sup> On October 1, 2015, Defendants moved for a continuance due to Plaintiff Orn's "significant and unexpected medical issues, necessitating multiple hospitalizations" which prevented them from completing discovery.<sup>6</sup> The Court continued trial to September 19, 2016.<sup>7</sup> On April 28, 2016, Plaintiffs' counsel moved for a continuance in part because Mr. Orn's "hospitalizations [had] continued due to the nature of his wounds and complications as a result thereof" which prevented Plaintiffs' and Defendants' experts from preparing their opinions.<sup>8</sup> The Court granted the unopposed motion.<sup>9</sup> On December 15, 2016, the parties stipulated to a continuance again, in part because:

... Plaintiff Than Orn has continued to be hospitalized for extensive periods of time since the last trial continuance for on-going, significant medical issues, including the highly communicable Methicillin-Resistant *Staphylococcus aureus* or MRSA bacteria. Mr. Orn is currently hospitalized at St. Joseph's in Tacoma due to his ongoing illness.<sup>10</sup>

The Court again granted this continuance.<sup>11</sup> On August 29, 2017, the parties stipulated to a fifth continuance because Plaintiffs learned for the first time that Plaintiff Orn's vehicle was

<sup>3</sup> Vertetis Decl. at Ex. 1 (Deposition of Dr. Singh at 16:13-17; 32:3-18; 43:20-23).

<sup>4</sup> Dkt. # 8.

<sup>5</sup> Dkt. # 12; Dkt. # 13.

<sup>6</sup> Dkt. # 22 at p. 2-4.

<sup>7</sup> Dkt. # 26.

<sup>8</sup> Dkt. #29 at p. 2-3.

<sup>9</sup> Dkt. #30.

<sup>10</sup> Dkt. #45 at p. 3.

<sup>11</sup> Dkt. #46.

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1 still in the custody and control of the Tacoma Police Department and an independent inspection  
2 of the vehicle was necessary.<sup>12</sup> Trial was then set for April 16, 2018.<sup>13</sup>

3 A few months before trial, Defendants moved for summary judgment on the basis of  
4 qualified immunity.<sup>14</sup> When this Court denied Defendants' motion in part,<sup>15</sup> Defendants filed  
5 an interlocutory appeal from that order and this case was stayed pending review by the Ninth  
6 Circuit. Nearly a decade after the shooting, on February 3, 2020, the Ninth Circuit affirmed  
7 this Court's order on summary judgment denying qualified immunity to Clark. *Orn v. City of*  
8 *Tacoma*, 949 F.3d 1167 (9th Cir. 2020). Trial is currently set for January 11, 2021.<sup>16</sup>

### 9 III. EVIDENCE RELIED UPON

10 This motion relies upon the Declaration of Thomas B. Vertetis in Support of Plaintiffs'  
11 Motion for Priority Trial Date ("Vertetis Decl."); and all of the pleadings, exhibits, and  
12 documents already on file in this matter.

### 13 IV. LEGAL ARGUMENT

#### 14 A. This Court Possesses Inherent Authority to Control Its Docket.

15 District courts have broad discretion to control cases on their dockets. *Landis v. North*  
16 *American Co.*, 299 U.S. 248, 254 (1936); *see also CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th  
17 Cir. 1962) (a district court possesses "inherent power to control the disposition of the causes on  
18 its docket in a manner which will promote economy of time and effort for itself, for counsel,  
19 and for litigants."). And federal law favors expediting cases that invoke the Constitution or  
20 other federal law. Under FRCP 40, "[t]he court must give priority to actions entitled to priority  
21 by a federal statute." Section 1657(a) of Title 28 of the United States Code provides:

22 Notwithstanding any other provision of law, each court of the United States shall  
23 determine the order in which civil actions are heard and determined, except that  
the court shall expedite the consideration of any action brought under chapter

24 <sup>12</sup> Dkt. # 60.

25 <sup>13</sup> Dkt. # 62; Dkt. # 63.

26 <sup>14</sup> Dkt. #90.

<sup>15</sup> Dkt. # 124.

<sup>16</sup> Dkt. #139.

153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, *or any other action if good cause therefor is shown. For purposes of this subsection, "good cause" is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.*

(Emphasis added). Based on this section, courts have determined "[i]t is abundantly clear that Congress intended to give preference on crowded court dockets to federal questions." *Zukowski v. Howard, Needles, Tammen, & Bergendoff*, 115 F.R.D. 53, 55 (D. Colo. 1987). The local court rules further provide that a scheduling order may be modified for "good cause and with the judge's consent." LCR 16 (b)(6).

Here, the Court should exercise its inherent authority to prioritize Plaintiffs' case on the docket. Good cause exists both because this is a case involving a federal question, specifically, an individual's Fourth Amendment right to be free from the use of excessive force, and also because Plaintiff Orn's paralysis and condition makes him more susceptible to health problems and future hospitalizations. Plaintiff Orn's past hospitalizations for extensive periods of time and his on-going, significant medical issues due to the shooting have already contributed to the years of delay in this case. He has limited mobility, is dependent on others for much of his care, and his condition has made him susceptible to additional medical emergencies. In the event his current trial date is moved due to the COVID-19 pandemic, Plaintiffs respectfully ask this Court for a priority trial date so that Plaintiff Orn may have access to our court system commensurate, regardless of his medical condition.

## V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask the Court for a priority trial date in the event the current trial date is amended.

RESPECTFULLY submitted this 29th day of June, 2020.

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**CERTIFICATE OF SERVICE**

I, **Sarah Awes**, hereby declare under penalty of perjury under the laws of the State of Washington that I am employed at Pfau Cochran Vertetis Amala PLLC and that on today's date, I served the foregoing via the Court's Electronic Service System by directing delivery to the following individuals:

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DATED this 29th day of June, 2020.

/s/ Sarah Awes

Sarah Awes  
Legal Assistant

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